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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

KOJI S. SAKAI,

Plaintiff,

v.

INTERNATIONAL TECHNOLOGICAL
UNIVERSITY FOUNDATION,

Defendant.

Case No.: 21CV390762

**ORDER CONCERNING PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
CLASS/PAGA SETTLEMENT AND
JUDGMENT**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff alleges that Defendant International Technological University Foundation ("ITU") failed to reimburse its lecturers and adjunct professors for home office expenses, failed to compensate them for non-teaching time, and committed wage statement and other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in a minute order dated July 7, 2022. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

Before the Court are Plaintiff's motions for final approval of the settlement and for approval of his attorney fees, costs, and service award. The motions are unopposed. The Court issued a tentative ruling on November 16, 2022, and no one contested it at the hearing on November 17. It now issues its final order, which GRANTS both motions.

1 **I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

2 **A. Class Action**

3 Generally, “questions whether a [class action] settlement was fair and reasonable,
4 whether notice to the class was adequate, whether certification of the class was proper, and
5 whether the attorney fee award was proper are matters addressed to the trial court’s broad
6 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
7 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
8 260.)

9 In determining whether a class settlement is fair, adequate and reasonable, the
10 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
11 the risk, expense, complexity and likely duration of further litigation, the risk of
12 maintaining class action status through trial, the amount offered in settlement, the
13 extent of discovery completed and the stage of the proceedings, the experience
14 and views of counsel, the presence of a governmental participant, and the reaction
15 of the class members to the proposed settlement.
16 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

17 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
18 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
19 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
20 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
21 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
22 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
24 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
25 marks omitted.) The trial court also must independently confirm that “the consideration being
26 received for the release of the class members’ claims is reasonable in light of the strengths and
27 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
28 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be

1 “provided with basic information about the nature and magnitude of the claims in question and
2 the basis for concluding that the consideration being paid for the release of those claims
3 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

4 **B. PAGA**

5 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
6 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
7 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
8 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
9 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
10 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
11 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
12 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

13 Similar to its review of class action settlements, the Court must “determine independently
14 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
15 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
16 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to
17 remediate present labor law violations, deter future ones, and to maximize enforcement of state
18 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
19 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
20 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
21 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
22 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

23 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
24 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
25 verdict].) But a permissible settlement may be substantially discounted, given that courts often
26 exercise their discretion to award PAGA penalties below the statutory maximum even where a
27 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
28 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

1 **II. TERMS AND ADMINISTRATION OF SETTLEMENT**

2 The non-reversionary gross settlement amount is \$122,000. Attorney fees of up to
3 \$39,996 (a little under thirty-three percent of the gross settlement), litigation costs not to exceed
4 \$10,000, and administration costs of approximately \$5,000 will be paid from the gross
5 settlement. \$20,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the
6 LWDA. The named plaintiff will seek an incentive award of \$7,500.

7 The net settlement will be allocated to settlement class members proportionally based on
8 their weeks worked during the class period. Class members will not be required to submit a
9 claim to receive their payments. For tax purposes, settlement payments will be allocated 20
10 percent to wages and 80 percent to non-wages. The employer's share of taxes will be paid
11 separately from the gross settlement. Funds associated with checks uncashed after 120 days will
12 be tendered to Bay Area Legal Aid.

13 As reflected in the Second Amended Joint Stipulation of Class Action and PAGA
14 Settlement filed on June 14, 2022, class members will release "[a]ny and all claims alleged in the
15 operative PAGA Letter and forthcoming Complaint, or that reasonably could have been alleged
16 based on the factual allegations in the PAGA Letter and/or Complaint, and arising during the
17 Class Period," including specified wage and hour claims. The Class Period is defined as "[t]he
18 period from October 19, 2017, through October 15, 2021."

19 The notice process has now been completed. There were no objections to the settlement
20 or requests for exclusion from the class. Of the 42 notices mailed by the administrator, 2 were
21 re-mailed to updated addresses and none were ultimately undeliverable. The administrator
22 estimates that the average payment to class members will be \$1,059.62, with a low payment of
23 \$189.35 and a high payment of \$2,546.65.

24 At preliminary approval, the Court found that the settlement is a fair and reasonable
25 compromise of the class claims and that the PAGA allocation is genuine, meaningful, and
26 reasonable in light of the statute's purposes. It finds no reason to deviate from these findings
27 now, especially considering that there are no objections. The Court thus finds that the settlement
28 is fair and reasonable for purposes of final approval.

1 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

2 Plaintiff seeks a fee award of \$39,996, about one-third of the original gross settlement,
3 which is not an uncommon contingency fee allocation in a wage and hour class action. This
4 award is facially reasonable under the “common fund” doctrine, which allows a party recovering
5 a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also
6 provides a lodestar figure of \$55,711.40, based on 87.65 hours spent on the case by counsel and
7 a legal assistant billing at \$200–919 per hour. Plaintiff’s request results in a negative multiplier.
8 The lodestar cross-check supports the percentage fee requested, particularly given the lack of
9 objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th
10 480, 488, 503–504 [trial court did not abuse its discretion in approving fee award of 1/3 of the
11 common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)¹

12 Plaintiff’s counsel also request \$10,000 in litigation costs (slightly less than their actual
13 costs). Plaintiff’s costs appear reasonable based on the summary provided and are approved.
14 The \$5,000 in administrative costs are also approved.

15 Finally, the named plaintiff seeks an incentive award of \$7,500. To support his request,
16 he previously submitted a declaration describing his efforts on the case. The Court finds that the
17 class representative is entitled to an enhancement award and the amount requested is reasonable.

18 **IV. ORDER AND JUDGMENT**

19 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
20 DECREED THAT:

21 The motion for final approval is GRANTED, and the motion for attorneys’ fees and costs
22 is also GRANTED. The following class is certified for settlement purposes:

23 Plaintiff and all individuals who worked for Defendant as adjunct professors or
24 part-time lecturers in California at any time on or between October 19, 2019
25 through October 15, 2021.

26 No one otherwise included in that definition is excluded from the class.

27
28 ¹ Plaintiff has agreed in writing to the equal fee splitting arrangement between Ackermann &
Tilajef, P.C., and the referring firm, India Lin Bodien, Attorney at Law.

1 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
2 Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the
3 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
4 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
5 enforce the terms of the settlement agreement and the final order and judgment.

6 The Court sets a compliance hearing for **May 18, 2023 at 2:30 P.M.** in Department 1. At
7 least ten court days before the hearing, class counsel and the settlement administrator shall
8 submit a summary accounting of the net settlement fund identifying distributions made as
9 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*
10 recipient; the status of any unresolved issues; and any other matters appropriate to bring to the
11 Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil
12 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

13 **IT IS SO ORDERED.**

14 Date: November 19, 2022

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17 The Honorable Sunil R. Kulkarni
18 Judge of the Superior Court
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